THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION No.2124 of 2004

25th June 2007

Between:

1. Vempa Surya Prakasa Rao (Died).
2. Vempa Lalitha Prasunamba and two others.

.. Petitioners

And

The State of Andhra Pradesh, rep.by Mandal Revenue Officer, Vijayawada.

.. Respondent

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION No.2124 of 2004

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

The first petitioner herein, who is the respondent in the Courts below against whom the proceedings under the provisions of the A.P. Land Grabbing (Prohibition) Act (for brevity "the Act") was initiated, filed this Writ Petition seeking a writ of Certiorari assailing the order dated 15.12.2003 in

L.G.A.No.6 of 2002 on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad allowing the appeal at the instance of the respondent herein as against the orders of dismissal dated 31.08.2000 in L.G.O.P.No.633 of 1993 on the file of the Special Tribunal-cum-District Judge, Krishna at Machilipatnam.

Heard Sri P.R. Prasad, learned counsel appearing for the petitioners and the learned Government Pleader for Revenue (Assignment) appearing for the respondent.

Briefly stated the facts of the case are that in an application filed under Section 7-A of the Act, the respondent herein sought declaration that the petitioner is the land grabber in respect of the schedule land to an extent of 120 sq.yards equal to 104 sq.mts. in old NTS No.17/1A1A, new 26 of Vijayawada Town classified as Hill Poramboke as per TSR. Further, it was stated that the mother of the petitioner herein purchased the schedule land from one S.A. Sattar under a registered sale deed dated 27.01.1996 to an extent of 200 sq.yards. The proceedings under the provisions of the A.P. Land Encroachment Act was also initiated by issuing a notice under Section 7 thereof and the petitioner paid an amount of Rs.10/- (Rupees ten only) on 22.12.1984 for the said encroachment and yet he constructed a building in the said site, which belongs to the Government. The petitioner is not entitled to the benefits under G.O.Ms.No.331 Revenue (ASSGN-II), dated 21.04.1991. Hence, the application.

Contesting the case of the respondent, the case of the petitioner herein in the counter-affidavit was that of total denial as to the title of the respondent and further set up his own title independently to the effect that the petitioner's mother had purchased the property from one S.A. Sattar in the year 1966. The said Sattar was in possession and enjoyment all along for the last more than 22 years prior to the said sale and thereafter the petitioner had constructed a building in an extent of 120 sq.yards in the year 1967 and thus, he has been in possession and enjoyment including that of the predecessors-in-title for the last more than 59 years in open, continuous and uninterrupted possession and also perfected his title by way of adverse possession and sought for dismissal of the application.

With these and other allegations, the special Tribunal framed the issues and both the sides went into trial wherein on behalf of the respondent herein, P.W.1 was examined and Exs.A.1 to A.6 were marked whereas on behalf of the petitioner herein, R.W.1 was examined and Exs.B.1 to B.15 were marked.

On appraisal thereof, the special Tribunal did not find favour with the claim as set forth by the respondent herein and dismissed the same. Aggrieved thereby, the respondent herein preferred an appeal where on re-appreciation of the entire evidence and the material on record, the Special Court did not agree with the findings as arrived at by the special Tribunal and held that the respondent has proved its title whereas the petitioner has

not proved his valid title nor possession as claimed by him and therefore, held that the petitioner is not entitled to sustain possession and that he is a land grabber. Hence, the Writ Petition.

The learned counsel appearing on behalf of the petitioners has sought to take us through the entire evidence and the material on record and contend that having regard to the evidence as produced on behalf of the petitioner which amply reflects possession apart from the title including beyond the statutory period, the petitioner could not have been declared as a land grabber and the respondent has failed to prove its right, title and entitlement.

The learned Government Pleader appearing on behalf of the respondent sought to sustain the claim and the findings given by the lower appellate Court and contended that the same are arrived at after taking into consideration the relevant material and the evidence both oral and documentary and therefore, they do not warrant any interference even otherwise, it has been contended that the petitioner himself has not proved any title or possession as claimed by them.

Considering the submissions made on both the sides and on perusal of the entire material available on record, the only question that arises for consideration is as to whether the petitioner can be declared as a land grabber and the findings as arrived at by the lower appellate Court reversing that of the special Tribunal are sustainable or can be interfered with by this

Court ?

The un-disputed facts primarily which can be note of are to the effect that the petitioner herein was in possession as on the date of the filing the application and had also constructed a building therein. The said property has been claimed to be that of the respondent herein and in support they sought to place reliance on Ex.A.1-adangal, which pertains to 1399-1400 fasli, Ex.A.2-extract from Town Survey Register, Ex.A.4-sketch, Ex.A.5-another sketch showing the suit schedule property and Ex.A.6-notice issued under Section 7 of the A.P. Land Encroachment Act in the year 1973. Though the special Tribunal did not try to accept these documents and held that the respondent herein has failed to prove its title, however, the lower appellate Court has gone into the very same documents and held that there being no such attribution against the validity or otherwise of these documents, there is no justification in rejecting the same and further the respondent proved the *prima facie* title over the said property.

Coming to the evidence as produced on behalf of the petitioner on whom the burden primarily rests to dispel that he is not a land grabber. The special Tribunal on a consideration of the documents and the evidence produced by the petitioner, held that the petitioner is in possession on his own right and thus, he is not land grabber whereas the appellate Court i.e., special Court on re-appraisal of the very same documents, has found that those documents would not in any way help the petitioner herein to show

the title or possession much less beyond the statutory period. The petitioner has totally failed to dispel the doubts which have been thrown in these documents as to the corrections in Ex.B.1, absence of filing of any link document prior to Ex.B.1, absence of any sanction plan for construction of the building, failure to produce any witness in proof of Ex.B.1 i.e., namely attestors or the vendors etc., and the appellate Court held that the petitioner has failed to prove his right and title in the said property and further the evidence as produced on behalf of the respondent has remained un-rebutted. It was also taking note of the fact that having regard to the proceedings initiated under the A.P. Land Encroachment Act where admittedly the petitioner having received notice, no reply was given and further even the revenue receipt in Ex.B2 which is subsequent to filing of the present application and the other documents also not having any proper sound basis to merely act upon or take into consideration, the lower appellate Court on a valid and sustainable reasons *prima facie* would show that they would not suffer from any perversity and such a finding of fact would not go into the purview of judicial review under Article 226 of the Constitution of India. In fact, merely because it is a reversing situation in regard to the findings of fact, however, the finding as arrived at by the lower appellate Court is on a proper assessment and supported with well considered reasons. Hence, we of the view that the petitioner has failed to make out any case or valid ground to warrant interference of this Court

under Article 226 of the Constitution of India. Hence, there are no merits in this Writ Petition.

The Writ Petition is dismissed. No costs.

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B. PRAKASH RAO, J

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G. BHAVANI PRASAD, J

25th June 2007.
Chvn.